EARTH SCIENCES, INC.

IBLA 81-873; IBLA 81-874 Decided March 28, 1984

Appeal from decisions of the Idaho State Office, Bureau of Land Management rejecting in part prospecting permit applications. I-8107, I-8108, I-8109, and I-8110.

Affirmed.

1. Applications and Entries: Vested Rights--Mineral Lands: Leases--Mineral Lands: Prospecting Permits--Mineral Leasing Act: Generally--Phosphate Leases and Permits: Permits

   The filing of a phosphate prospecting permit application creates no vested rights in the applicant and the application must be rejected if the land described therein is determined by Geological Survey to be within a known phosphate leasing area and to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the underlying phosphate bed, which finding requires competitive leasing of the land.

2. Regulations: Binding on the Secretary--Regulations: Force and Effect as Law

   The Boards of Appeal of the Department of the Interior do not have the authority to declare a duly promulgated regulation invalid.

3. Regulations: Generally

   All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations, regardless of their actual knowledge of what is contained in such regulations.

4. Administrative Procedure: Hearings--Constitutional Law: Due Process--Rules of Practice: Hearings

   Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

APPEARANCES: Peter J. Leveton, president, Earth Sciences, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from decisions dated June 16 and 18, 1981, of the Idaho State Office, Bureau of Land Management (BLM), rejecting in part phosphate prospecting permit applications I-8107, I-8108, I-8109, and I-8110. The applications were filed on March 20, 1974.

The decisions appealed from partially rejected the applications 1/ because some of the lands described therein were located either in the Aspen Range Known Phosphate Leasing Area, or the Webster Range-Dry Ridge Known Phosphate Leasing Area, established on October 16, 1978, and March 1, 1978, respectively. A known phosphate leasing area (KPLA) is an area where prospecting or exploratory work is unnecessary to determine the existence or workability of phosphate deposits. Christian F. Murer, 57 IBLA 333 (1981). BLM's decisions were based on reports of the Geological Survey (GS). 2/ These reports, supplied to the Board upon request, contain geologic data regarding phosphate beds underlying the subject lands and support designation of the lands as within a KPLA. BLM concluded, based on GS's information, that since the lands in question were within KPLA's, they were available only for competitive leasing under the Mineral Leasing Act, 30 U.S.C. § 211(a) (1976).

Appellant contends that the decisions are contrary to its reasonable expectations and to governing regulations. Appellant asserts that applicable regulations are vague, deny due process, and were improperly promulgated. Appellant states that it was deprived of vital rights in that it was not notified of the classification of the lands as KPLA's. Appellant requests a factual hearing before an Administrative Law Judge.

[1] In the absence of any showing that GS's determination is incorrect, lands within a KPLA must be leased competitively and appellant's applications for prospecting permits were properly rejected to the extent they described lands within KPLA's. 43 CFR 3521.2-2(c)(1); J. R. Simplot Co., 58 IBLA 305 (1981); Christian F. Murer, supra.

Although the KPLA determinations were made after the applications were filed, the applications themselves create no vested rights in the applicant, and are properly rejected if, prior to the issuance of a permit, the land applied for is determined to be subject solely to the competitive leasing provisions of the Mineral Leasing Act. This holds true even if the filings

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1/ Appellant, in its statement of reasons, has mistakenly declared that the applications "were rejected in whole." The decisions rejected only that part of the applications which described lands within a KPLA.
2/ By Secretarial Order No. 3071 (47 FR 4751 (Feb. 2, 1982)), the Secretary created the Minerals Management Service to, inter alia, take over the functions of the Conservation Division, Geological Survey. Secretarial Order No. 3087, dated Dec. 3, 1982, consolidated the onshore mineral leasing functions of the Minerals Management Service and the Bureau of Land Management within BLM. 48 FR 8983 (Mar. 2, 1983). Further reference in the decision will be to GS, since the Conservation Division, Geological Survey, was in existence during the relevant determinations.

were made prior to the ascertainment of the extent or workability of the phosphate bed underlying the requested lands. Christian F. Murer, supra; William F. Martin, 24 IBLA 271 (1976); Frank J. Allen, A-30641 (May 17, 1967); see Permian Mud Service, Inc., 31 IBLA 150, 159, 84 I.D. 342, 346 (1977); William T. Alexander, 21 IBLA 56 (1975).

[2, 3] With respect to appellant's challenges to the regulations, we point out that Boards of Appeal of this Department have no authority to declare a duly promulgated regulation invalid. Colorado-Ute Electric Association, Inc., 46 IBLA 35 (1980). Moreover, all persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations regardless of their actual knowledge of what is contained in such regulations. Overthrust Oil and Gas Corp., 52 IBLA 119, 88 I.D. 38 (1981). In any event, it is the statute, not the regulations, which limits the Secretary's authority to issue permits only where prospecting work is necessary to determine the existence and workability of a phosphate deposit. See 30 U.S.C. § 211(b) (1976). Once it is determined that workable phosphate exists, it is no longer within the Secretary's authority to issue a permit.

[4] Under the circumstances of this case any due process rights, which appellant might have, were preserved by this appeal. While appellant has requested a fact-finding hearing, it has made no proffer of proof that the KPLA determinations were in error. 3/ The fact that the lands in issue are within KPLA's compels the rejection of the permit applications as to those lands. It is well established that where there are no disputed questions of fact and the validity of a claim turns on the legal effect to be given facts of record, no hearing before an Administrative Law Judge is required. Dorothy Smith, 44 IBLA 25 (1979).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

3/ Pursuant to an order of the Board, BLM submitted copies of the Idaho Phosphate Land Leasing Minutes Nos. 7 and 8, which had included some of the lands under appellant's offer in the KPLA's. Appellant was afforded an opportunity to challege the conclusion contained therein. It chose not to do so.